
Act On It:

4 Key Steps to Prevent Land Grabs

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Women members of a collective farming group in Tetulbandhi village in Birbhum district of India’s West Bengal state. These women, belonging to the Santal tribe, took up collective farming to grow seasonal vegetables and paddy using inexpensive organic farming techniques.
 PHOTO: ACTIONAID.

List of abbreviations and acronyms

AU	African Union
BITs	Bilateral Investment Treaties
CBOs	Community-Based Organisations
CFS	Committee on World Food Security
CRSA	Climate-Resilient Sustainable Agriculture
CSO	Civil Society Organisation
DFI	Development Finance Institutions
ESIA	Environmental and Social Impact Assessments
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investment
FPIC	Free, Prior and Informed Consent
ha	hectare
HRIA	Human Rights Impact Assessment
IFC	International Finance Corporation
IFIs	International Finance Institutions
ILO	International Labour Organization
ISDS	Investor-State Dispute Settlement
NGO	Non-Governmental Organisations
OECD	Organisation for Economic Co-operation and Development
REDD+	Reducing Emissions from Deforestation and Forest Degradation
SEZ	Special Economic Zone
TGs	Tenure Guidelines (voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security)
UNFCCC	UN Framework Convention on Climate Change
WTO	World Trade Organization

Executive summary

Over the past 15 years, tens of millions of hectares of land have been acquired by large investors in developing countries. The Land Matrix documented 1,037 transnational land deals covering 37,842,371 hectares during this period, while many more deals remain undocumented.¹ This global land rush is causing widespread forced evictions and denial of access to key land and natural resources for millions of women, small-scale food producers, pastoralists, gatherers, forest dwellers, fisherfolk, and tribal and indigenous peoples.

Access to and control over land and natural resources is, however, crucial to people's livelihoods and to ensuring their rights to food, water, work, housing and a healthy environment. Governments and donor institutions have the opportunity and responsibility to ensure that their policies and actions contribute to the recognition and respect of these rights. To prevent further land grabbing and help realise the right to food for all, ActionAid urges governments and donors to adopt a human rights-based approach to development and take the following four steps:

STEP 1: Fully implement the Tenure Guidelines on land, fisheries and forests through participatory, inclusive mechanisms that prioritise the rights and needs of legitimate tenure users, especially women.

STEP 2: Ensure the free, prior and informed consent for all communities affected by land transfers, including the fair and equitable participation of all groups within local communities, especially excluded and marginalised groups such as women, children, minorities, the elderly and disabled.

STEP 3: Review public policies and projects that incentivise land grabbing, and instead support policies that prioritise the needs of small-scale food producers – particularly women – and sustainable land use.

STEP 4: Regulate businesses involved in land deals so that they are fully accountable for respecting human rights, tenure rights and environmental, social and labour standards. This includes ensuring that investors carry out comprehensive human rights due diligence, are transparent and are fully accountable throughout all their operations at home and abroad.

This report sets out how these four steps can be implemented by governments through a detailed checklist of policy reforms and actions, including concrete examples from countries where these were implemented.

4 steps to prevent land grabbing

STEP 1: *Fully implement the Tenure Guidelines on land, fisheries and forests by:*

- Ensuring a human rights-based approach to land governance
- Establishing national multi-stakeholder land governance platforms, with small-scale food producers and women in the driver's seat
- Recognising, respecting and protecting customary and informal land rights, as well as considering redistributive land reform
- Ensuring equal tenure rights and access to land for women
- Preventing forced evictions and the repression of landrights defenders.

STEP 2: *Ensure the free, prior and informed consent (FPIC) of all communities affected by land-based investments.*

STEP 3: *Review public policies that fuel land grabs, and replace them with policies that prioritise sustainable land use and the needs of women and other small-scale food producers by:*

- Suspending and reviewing large-scale land concessions, special economic zones and 'growth corridors'
- Suspending and reviewing international aid policies, initiatives, projects and policy advice that incentivise large-scale land acquisitions
- Ensuring that trade and investment rules comply with human rights and environmental, social and labour standards
- Phasing out the energy and climate policies that encourage land grabs
- Prioritising public investment in human-rights based and environmentally focused approaches.

STEP 4: *Regulate businesses so that they are accountable for respecting human rights, and environmental, social and labour standards.*

Introduction

Access to land is crucial for the 2.5 billion people involved in full- or part-time small-scale agriculture.² For millions of people in poor countries, access to and control over land is a matter of survival and human dignity, as well as fundamental to cultural, religious and spiritual identities. Small-scale food producers manage over 500 million family farms of two hectares (ha) or less, and the Food and Agriculture Organization (FAO) estimates that family farms now produce more than 80% of the world's food in value terms.³

Over the past 15 years, large-scale land deals have multiplied in developing countries and endangered access to and control over land for millions of people.⁴ From the coastal lands of Caracol in Haiti to the scrubland reserves at Ndiaël in Senegal or the forests of Oddar Meanchey in Cambodia, ActionAid has worked directly with local communities and partners facing large-scale land acquisitions and has found that they often lead to expropriation, forced evictions, human rights violations, and threats to and destruction of important religious and cultural sites, as well as to increasing poverty, hunger, marginalisation and destitution.⁵ Our recent report, *The Great Land Heist*,⁶ outlined the key global drivers of land grabbing.⁷ It documented the negative impact of land grabbing on women and vulnerable communities in Cambodia, Haiti, India, Kenya, Mozambique, Senegal,⁸ Sierra Leone⁹ and Tanzania.¹⁰

With investment mainly from agribusiness, biofuel, extractive and forestry companies,¹¹ many large-scale land deals are shrouded in secrecy – which often favours corruption. Local communities enjoy little transparency, accountability or participation in land use planning. Their local customary, collective or informal tenure rights are often not recognised or respected. Communities are rarely given adequate information or free, prior and informed consent (FPIC) based on gender-sensitive human rights and environmental and social impact assessments (HRIAs and ESIA). In many cases, local communities face forced evictions, intimidation, inadequate compensation and inaccessible legal redress.¹² Some land grabs have led to violent conflict, threats, arbitrary detention and criminalisation of dissent. Others have led to destruction of property and even loss of life.¹³

Land targeted for large-scale land deals is frequently labelled as 'idle', 'vacant', 'under-used' or 'available' by investors or governments, while research shows such land is, in reality, often used as a vitally important resource by women, pastoralists, gatherers and shifting cultivators.¹⁴ Furthermore, investors are targeting the poorest countries, which have high levels of hunger, weak land governance and low land tenure security.¹⁵

Rural women are particularly hard hit by land grabs despite their major role in food production in developing countries.¹⁶ Women lose out on access to food, water, seeds, firewood, charcoal, medicinal plants and agro-biodiversity.¹⁷ Yet the FAO estimates that if women had the same access to productive resources as men – such as productive land, training and credit – they could sustainably increase their yields by 20-30% and reduce the number of hungry people in the world by 12-17%.¹⁸

Public incentives that drive large-scale land deals – such as 'growth corridors', trade and investment agreements and rules, or biofuel production and consumption mandates – all incentivise and greatly exacerbate the risk of land grabbing, and must urgently be suspended and reviewed to prevent further losses.

Governments and donors should stop promoting and supporting investments in capital-intensive industrial agriculture that lead to large-scale land transfers, dispossession and environmental degradation, and which entrench the power of large agribusiness, extractive and forestry corporations. Instead, governments should support food sovereignty and enhance participation, transparency and accountability by aiming to re-localise and democratise land tenure and food systems at all levels.

Governments and donors should prioritise public investment in small-scale food producers, especially women, by recognising, enforcing and *strengthening* producers' rights to access and control land, water, seeds and natural resources. They should promote land reform and equitable access to and control over land for rural women, the landless, young people and marginalised groups. They should prioritise highly effective and sustainable production systems – such as Climate-Resilient Sustainable Agriculture (CRSA)¹⁹ – and invest to reduce food loss, boost gender-focused rural extension and farmer-to-farmer networks, and support diverse small-scale food producer-focused local, national and regional food systems and markets.

This document sets out four key steps that ActionAid believes governments and donors should urgently take to prevent land grabbing.

Box one: What is a land grab?

The most widely referenced definition of what constitutes a land grab is that set out by the Tirana Declaration,²⁰ agreed by governments, international organisations and civil society groups participating in a major conference on land regulations and rights in May 2011. It defines land grabs as land deals “*that are one or more of the following:*

1. *in violation of human rights, particularly the equal rights of women;*
2. *not based on free, prior and informed consent of the affected land-users;*
3. *not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered;*
4. *not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing, and;*
5. *not based on effective democratic planning, independent oversight and meaningful participation.”*



Members of the Coalition of Women Farmers (COWFA) in Dowa, Malawi, launch a sensitisation campaign to obtain access to and control over land from traditional authorities.
PHOTO: ZILANI KHONJE/ACTIONAID.

STEP 1:**Fully implement the Tenure Guidelines on land, fisheries and forests**

The adoption of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security – also known as the Tenure Guidelines (TGs)²¹ – on 11 May 2012 marked a historic milestone for organisations, institutions and individuals working on land rights. The TGs were negotiated over three years by the multi-stakeholder Committee on World Food Security (CFS), the foremost political platform for food and nutrition issues, with the participation of governments, international and regional organisations, the private sector and civil society organisations (CSOs) representing smallholder family farmers, artisanal fisherfolk, pastoralists, landless, urban poor, agricultural and food workers, women, young people, consumers, indigenous peoples and non-governmental organisations (NGOs).

The TGs establish internationally accepted principles and standards for the responsible governance of land, fisheries and forests. The overall goal of the Guidelines is to help countries improve their governance of land tenure so as to ensure better food security for their population, with special attention given to small-scale food producers, indigenous communities and women's rights. Governments should fully implement the TGs as a first important step to prevent land grabs. The TGs bring together existing land tenure-related global human rights standards and principles and provide detailed guidance on applying a human rights-based approach to:

- legal recognition and allocation of tenure rights and duties – including customary, collective and informal land rights
- transfers and other changes to land tenure rights and duties; and
- administration of land tenure.

Box two: Human Rights and the TGs²²

The main human rights declarations, treaties and principles embodied in the Tenure Guidelines include:

- The Universal Declaration of Human Rights
- The International Convention on the Elimination of All Forms of Racial Discrimination
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The Convention on the Elimination of All Forms of Discrimination Against Women
- The International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work
- The UN Basic Principles and Guidelines on Development-based Evictions and Displacement
- UN Guiding Principles on Business and Human Rights
- The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons ('The Pinheiro Principles')

The TGs explicitly build on and support *The Voluntary Guidelines for the Progressive Realization of the Right to Adequate Food*, and the findings of the International Conference on Agrarian Reform and Rural Development in 2006. They also mention key human rights instruments relevant to tribal groups and indigenous peoples with customary tenure systems, including:²³

- International Labour Organization (ILO) Convention No. 169
- The Convention on Biological Diversity
- The UN Declaration on the Rights of Indigenous Peoples

Overall, the TGs say that states should:

- Recognise and respect all existing customary and informal tenure right holders and their rights – particularly those currently not protected by law.
- Safeguard all legitimate tenure rights against threats and infringements.
- Promote and facilitate the enjoyment of legitimate tenure rights.
- Provide access to justice to deal with infringements of legitimate tenure rights.
- Prevent tenure disputes from escalating into violent conflicts, as well as corruption.

Box three: African Union Land Policy Framework

Complementary to the TGs is the African Union's (AU's) land guidance, codified in the Framework and Guidelines on Land Policy in Africa (F&Gs), which sit alongside the AU's recent Guiding Principles on Large Scale Land Based Investments in Africa.²⁴ Developed through multi-stakeholder consultation under the Land Policy Initiative (AU-LPI),²⁵ the non-binding F&Gs were endorsed by AU heads of state in 2009 and highlight five priority areas for African governments when they are assessing large-scale land investments:²⁶

- **Small-scale first:** Investment decisions should be guided by a national strategy for sustainable agricultural development, recognising the key role of small-scale producers and of gender equality in achieving food security, poverty reduction and economic growth.
- **Holistic assessment:** Land governance and decision-making should be based on a holistic assessment of economic, financial, social, cultural and environmental costs and benefits from the proposed investment, for different stakeholders and throughout its lifetime.
- **Rights-based frameworks:** Policy and legal frameworks should ensure that investments are made within a framework that supports respect for human rights and recognises all legitimate rights to land – including informal, indigenous and customary tenure rights – and natural resources of all land users, including women, landless people, young people and other vulnerable groups. Strengthening security of tenure for women should be a fundamental aspiration.
- **Transparency:** To prevent corruption, decisions should be based on transparency, inclusiveness, informed participation and social acceptance of informed communities.
- **Accountability:** Governments should decentralise land services and uphold high standards of cooperation, collaboration and mutual accountability to address imbalances of power and promote investments beneficial to African societies.

► 1.1 Ensuring a human rights-based approach to land governance

Respect for human rights is a core principle of the TGs,²⁷ and the full adoption of this approach by governments is essential to ensure greater transparency, participation, consultation and accountability. The human rights-based approach includes adopting core principles such as human dignity, non-discrimination, equity and justice, gender equality, a holistic and sustainable approach, consultation and participation, transparency, rule of law and accountability. The TGs also remind governments and non-state actors that all human rights are universal, indivisible, interdependent and interrelated.²⁸

The TGs outline the various duties, obligations and responsibilities that key actors – such as states and non-state actors – have towards ensuring that tenure-related human rights are respected, protected and fulfilled. The following offer key perspectives on states' obligations in their home country and abroad, as well as private sector obligations under the TGs.

A) State obligations within their territories

The TGs highlight that states are the principal duty bearers for ensuring peoples' rights under international law, and they are reminded of their obligation to *respect, protect* and *fulfil* all human rights. In relation to the TGs, this means states should:

- **Recognise and respect** all legitimate tenure rights: States should 'do no harm' and not arbitrarily infringe on human rights through their own actions (i.e. no forced evictions), and provide fair and prompt compensation where tenure rights are taken for 'public purposes'.
- **Protect:** provide protection against threats and infringements by third actors (such as business enterprises), prevent forced evictions by third actors, and prevent tenure disputes, violent conflicts, and corruption by state employees and third parties.
- **Protect access to justice:** Operating under an '*Investigate, punish and redress*' regime, states should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights, and provide prompt and affordable enforcement of outcomes of disputes.
- **Fulfil:** Proactively support people to be able to enjoy their legitimate tenure rights, to the maximum of available state resources.

Under international law and the TGs, the state is the main guarantor and has the primary legal duty to protect vulnerable communities from threats and infringements of human rights in relation to land and forced evictions by third actors, such as business enterprises. Furthermore, states are encouraged to promote investment models that *avoid* large-scale transfer of tenure rights to achieve the overall goal of securing food security and the realisation of the right to adequate food for all.

B) State obligations abroad

Under the current land rush, some states directly own, finance, underwrite or support companies to make large-scale land acquisitions in third countries.²⁹ To prevent harm and violations to local communities, and based on the UN Guiding Principles on Business and Human Rights,³⁰ the TGs set out extraterritorial obligations for states that act abroad through state-owned, state-controlled or state-sponsored business enterprises.

The TGs require that all investors, including states investing abroad, should do no harm, safeguard against threats of dispossession of legitimate tenure rights holders and environmental damage, and respect human rights.³¹ To carry out their obligation to protect human rights and ensure land tenure rights protection, host states should now also take *additional steps* under the TGs to protect against human rights abuses by business enterprises that are owned or controlled by the state, or that receive substantial support and services from state agencies.

This includes carrying out human rights and land tenure rights due diligence – such as community-based HRIAs and ESIAs – and proactively providing guarantees that no infringements of human rights or legitimate tenure rights have occurred during a proposed large-scale land deal.

The TGs say states that invest overseas via state-controlled business enterprises should:

- **Respect** human rights and all legitimate tenure rights, and should monitor state-controlled agencies by requiring due diligence through HRIAs and ESIAs.
- **Protect** human rights and all legitimate tenure rights, making sure state contracted private businesses and support to business enterprises (e.g. via export credit agencies) do not lead to infringements, and provide public guarantees that no human rights or legitimate tenure right infringements have occurred in large-scale land deals.
- **Fulfil** human rights by supporting host states in financing compensation packages and safety nets for people affected by large-scale land deals.

Key actions on implementing the TGs

States should:

- **Adopt and implement a human rights-based approach to land governance to enhance transparency, participation and accountability, and to democratise tenure governance systems.**
- **Take additional steps and provide human rights guarantees for all state-owned or state-controlled businesses involved in large-scale land deals overseas.**

C) Private actors

The TGs state that businesses and private actors wanting to conduct large-scale land deals have a responsibility to respect human rights and tenure rights wherever they operate. Businesses should identify and assess in advance the potential impacts on all rights holders. They should publicly show they have done this, incorporate risk management to address any adverse impacts, and provide accessible grievance and complaints mechanisms. These human rights responsibilities extend throughout a company's entire value chain, and extend to supplier relations and direct and indirect impacts on neighbouring communities.

In summary, the TGs state that business responsibilities include:

- **Respect** human rights and all legitimate tenure rights, safeguard against dispossession and environmental damage, conduct gender-sensitive human rights due diligence throughout the entire value chain (i.e. HRIAs – ex-ante and ex-post, and ESIAs), and comply with national and international law.

- **Recourse** mechanisms should be offered in case of violations of human rights or legitimate tenure rights, including accessible judicial, non-judicial and inter-company grievance and complaints mechanisms. Companies should avoid corruption in any form and not weaken the integrity of judicial processes in host or home states.

► 1.2 Establish national multi-stakeholder platforms to implement the TGs

Governments should prioritise the establishment of national multi-stakeholder land governance platforms to oversee, implement, monitor and evaluate the implementation of the TGs, review and assess the impact of large-scale land deals, and ensure that legitimate tenure rights holders are not overlooked and are subject to a fair, transparent, participatory and non-discriminatory process of recognition and allocation of tenure rights.

Senegal, Mali and the Netherlands are already establishing inclusive multi-stakeholder national platforms on the TGs. Other countries are looking to Brazil's successful multi-stakeholder food and nutrition security council, CONSEA, which provides vital support, advice and oversight, and consists of two-thirds civil society members and one-third government representatives,³² or to the French Inter-ministerial Group on Food Security (GISA).³³

Land governance platforms should firmly focus on the needs of a diversity of small-scale food producers – including smallholders, pastoralists, herders, gatherers, forest dwellers, artisanal fisherfolk, landless people, young people, indigenous, tribal and urban producers. They should include all legitimate land users as well as community-based organisations (CBOs) and civil society organisations (CSOs) and those groups most affected by land tenure issues. Women must be well represented, with proportionate representation and effective participation in institutions dealing with land at all levels, including those responsible for the management of customary land and dispute resolution. A framework should be agreed that defines clear roles and responsibilities of various stakeholders to ensure effective representation of legitimate land tenure rights holders and to prevent elite capture and conflicts of interests.

Such platforms should identify and coordinate the adoption of community-led tools to monitor the implementation of land investment activities and land-related reforms in line with the TGs. They should support national monitoring guidelines in line with international guiding principles to ensure transparent and consistent monitoring and evaluation by stakeholders and local communities.



Multi-stakeholders workshop on the implementation of the Tenure Guidelines in the context of land reform, with representatives from civil society organisations, local and national administration, and government. January 2015
PHOTO: OUSMANE DEME/
ACTIONAID

Key actions to establish multi-stakeholder platforms

States should:

- **Establish a national multi-stakeholder platform to implement the TGs – that focuses in particular on the rights and needs of women and other small-scale food producers.**
- **Agree a framework that defines clear roles and responsibilities for various stakeholders to ensure effective representation of legitimate tenure rights holders, and prevent elite capture and conflicts of interest.**
- **Give a clear mandate to the multi-stakeholder platform to identify and coordinate tools to monitor and evaluate the implementation of the TGs and ensure transparency and accountability in policy making.**

► 1.3 Recognise and respect legitimate customary and informal tenure rights, and consider redistributive land reforms

Governments should establish transparent and participatory processes to identify, map, allocate and record all legitimate tenure rights holders and their rights. They should simultaneously review and amend laws and policies in order to recognise, respect and protect them. Legal review and policy reform should be carried out by a national multi-stakeholder platform and include recognition of all existing customary, collective and informal rights, as well as common property systems and gathering rights, and rights not currently protected by law.³⁴

In many countries, particularly in sub-Saharan Africa, the rights of land users are not properly secured or formalised. Much of the land in rural areas is formally owned by the state, leaving land users without property titles to the land they use, cultivate or hold in common;³⁵ only 10% of rural land in sub-Saharan Africa is registered.³⁶ This lack of security of tenure leaves rural communities highly vulnerable to land grabbing, which may be promoted by powerful local chiefs, district authorities, corrupt elites or rent-seeking government agencies.³⁷

In response, the TGs say governments should map and identify all existing land tenure rights and rights holders, particularly women and the most vulnerable communities. This is a broad call for states to do their utmost to map, identify, consult, allocate and record rights. They should not overlook anyone, irrespective of whether or not tenure rights are recorded or registered. The term 'legitimate tenure rights' is undefined in the TGs but refers to a diversity of tenure rights stemming from the local context. These include:

- ancestral, informal, customary, collective or unrecorded seasonal rights, including rights of access, use and extraction
- rights to use resources to generate income
- rights to delegate use on a temporary basis
- the right to pledge and permanently dispose of land through financial transactions or through gifts, legacies or inheritance.³⁸

States should clearly define and publicise through a transparent process the various categories of 'legitimate tenure rights'.³⁹ Successful, gender-sensitive, simple, affordable, accessible and inclusive land tenure mapping and legal recognition and registration can be conducted through participatory 'socio-land surveys', which involve the full consultation with and participation of all local right holders, including dependants and marginal groups, such as women, young people, migrants and pastoralists.⁴⁰ They should cover indigenous and tribal peoples and other communities with customary tenure systems, plus other forms of collectively owned land. Finally, the TGs advise states to establish and adequately resource transparent public land registries and up-to-date land tenure information systems, and ensure that institutions involved in land registration and allocation are competent bodies with have sufficient resources and capacities to carry out their duties.

In addition, governments are advised by the TGs to consider pursuing redistributive land reforms to ensure equitable access to land and inclusive rural development.⁴¹ Before any land is allocated to large-scale investors, governments should carry out assessments of the needs of landless groups. They should then consider options to answer those needs – such as allocation of public land, voluntary and market-based mechanisms as well as expropriation of private land, fisheries or forests. Intended beneficiaries include women, families seeking home gardens, informal settlement residents, displaced pastoralists, historically disadvantaged groups, marginalised groups, young people, indigenous peoples, gatherers and small-scale food producers.



Marchers demand agrarian reform during a march organised in downtown Port-au-Prince, Haiti, by the Je Nan Je platform, a national coalition of farmer organisations and civil society organisations. The march was organised two years after the devastating earthquake of January 2010 to deliver a charter of demands from rural communities around the country to the Haitian parliament. The charter calls for the implementation of redistributive land reform and for provision of decent homes for those affected by the earthquake.

PHOTO: CLAUDINE ANDRE/ACTIONAID

Key actions to recognise and respect customary and informal tenure rights

States should implement the TGs, and:

- **Conduct a multi-stakeholder review and reform of legal and policy frameworks to recognise and protect all legitimate tenure rights, including customary and informal rights, and those not currently protected by law, and particularly the rights of women and vulnerable communities.**
- **Implement strategies to identify, map, allocate and record all legitimate tenure rights through simple, affordable, accessible, transparent, participatory and gender-sensitive mechanisms, such as participatory land use planning and ‘socio-land surveys’.**
- **Consider implementing redistributive land reforms after conducting comprehensive assessments of the needs of landless groups.**

► 1.4 Ensure equal tenure rights and access to land for women

Governments should urgently review and reform their land-related laws and policies to ensure and enforce equal rights for women and men to access, use, control, own, bequeath and inherit tenure rights and provide safeguards to protect spouses and other family members not shown as holders of tenure in recording systems. This may entail reforms to laws on inheritance, tenancy and the property rights of widows and female-headed households.

Women’s rights to land are weak and insecure under both formal and customary *and* collective land tenure systems. Discriminatory laws and customary norms and traditions exacerbate women’s inequalities in access to land and property ownership and increase their vulnerability to land grabbing and destitution. In Brazil, for example, women own 11% of land, while in Kenya women account for only 5% of registered landholders.⁴² Most women gain access to land through husbands or male family members and in many places patriarchal customs and attitudes continue to position women as dependants rather than equal citizens with the right to own and control property themselves.⁴³ Social norms, widespread exclusion and disregard of women’s voices in land and natural resource-related decisions, discrimination in access to information, and limited access to affordable justice hinder women’s attempts to secure their land rights in general.⁴⁴

The TGs call for customary land rights systems to provide secure and equitable access to land for women. Where constitutional or legal reforms strengthen the rights of women and place them in conflict with custom, the TGs clearly give preference to universal non-discrimination principles over customary cultural traditions.⁴⁵

The former UN Special Rapporteur on the Right to Food, Olivier de Schutter, warns, however, not to conflate ensuring security of tenure with individual titling or the promotion of a market for land rights.⁴⁶ Individual titling and the emergence of land markets can result in further marginalisation of women and increased

concentration of land in the hands of powerful chiefs, elites and companies.⁴⁷ With an emphasis on decentralised land and natural resource management, successful women’s rights-focused land formalisation approaches include participatory land mapping and communal ownership.⁴⁸ Quotas for women in local government in Rwanda are effective, as is the increasing voice, empowerment and visibility of excluded rural women in village land committees and governance structures in India, Guatemala, Sierra Leone, Tanzania, Kenya and Zambia.⁴⁹ Judges and lawyers should be trained on women’s rights to land, and support should also be given for gender-focused paralegal training at local levels.⁵⁰



Fatou Fatty, 42, seven children and grows groundnuts, bene, maize, nerica rice, beans and yam. After working for many years on land she was leasing, she joined a group of women farmers called Tambahsang Kambeng Kafo, gathering 250 women in Dankunku, the Gambia. “Our organisation approached the local chief and the governor with a request for five hectares of land. Because these authorities know about our hard work on the land we lease from landlords, they gave us ten hectares of land instead of the five we wanted. We can use this land forever. Our children and even our grandchildren can use this land when we are not around,” says Fatou Fatty. PHOTO: SYLVAIN CHERKAOUJI/ COSMOS/ACTIONAID

Key actions to ensure equal rights and access to land for women

To ensure equality for women, states and donors should

- Review all land, property and tenancy-related laws and customary systems, and ensure and enforce equal rights for women and men to access, use, control, own, bequeath and inherit all legitimate tenure rights.
- Promote gender-sensitive, accessible, participatory and affordable ‘socio-land mapping’ and formalisation of all women’s legitimate tenure rights.
- Ensure greater access to information for excluded rural women and enhanced empowerment, voice and visibility – including through paralegal support, training of judges, and quotas for women in local government and village land committees.

► 1.5 Prevent forced eviction and the repression of land rights defenders

The TGs say governments should implement a number of safeguards to prevent expropriation and forced evictions, which should only happen where rights to land, fisheries or forests are required for a public purpose (see also Step 2 on public purpose). These safeguards include implementing measures such as strengthening laws and policies on preventing and minimising forced evictions. Many evictions, while respecting national laws, ignore the right to housing and the set of basic principles and guidelines on development-based evictions and displacement⁵¹ presented in 2007 by the Special Rapporteur on adequate housing to the Human Rights Council. These principles and guidelines aim to assist states in developing policies and legislations to prevent forced evictions at domestic level.

The TGs also say that states should respect and protect the civil and political rights of defenders of human rights, and should observe their human rights obligations when dealing with individuals and associations acting in defence of land, fisheries and forests. Indeed, land users and land rights defenders are increasingly the target of repressive measures. In 2007, the former UN Special Representative on Human Rights Defenders, said the second most vulnerable group of human rights defenders are those working on land rights and natural resources.⁵² Between 2011 and 2014, the Observatory for the Protection of Human Rights Defenders documented 43 assassination cases targeting land rights defenders and the judicial harassment of 123 defenders, sometimes together with their arbitrary detention. All regions in the world are concerned, with Asia and Latin America being the most affected.⁵³

Key actions against forced evictions and the repression of land rights defenders

To provide additional safeguards against land grabbing, states should:

- **Strengthen, implement, respect and monitor laws and policies prohibiting forced evictions, in line with the UN's Basic Principles and Guidelines on Development-Based Evictions and Displacement.**
- **Respect and protect the rights of human rights defenders in accordance with the UN Declaration on Human Rights Defenders, create an enabling environment for their work, give full and visible recognition to the legitimate role they play, and recognise their situation of particular vulnerability.**

STEP 2:**Ensure the free, prior and informed consent of all communities affected by land-based investments**

Governments should extend provisions in the TGs and ensure that *all* local communities likely to be affected by land-based investments have the right to free, prior and informed consent (FPIC). A lack of transparency, due process, access to information and asymmetries and major imbalances in power are a defining feature of many large-scale land deals.⁵⁴ Many rural communities often find out they are under threat of land grabbing and forced eviction only when the bulldozers move in to clear their land. “I got to know of the project when I saw bulldozers clearing the forest and attempting to forcefully evict people from their homesteads,” says Jacob Kokani, a village elder from Malindi in Kenya working with ActionAid, referring to a 50,000 ha biofuel plantation project on community trust land by Italian-owned Kenya Jatropha Energy Ltd in 2009.⁵⁵

As a safeguard against such violations, the TGs instruct states that tribal and indigenous peoples in particular have the legal right to FPIC before any large-scale land deals that may affect them or lead to their relocation are initiated. Codified in International Labour Organization (ILO) Convention No. 169 and the UN Declaration on the Rights of Indigenous People, FPIC is an important human rights standard that derives from the collective rights of indigenous peoples to self-determination and to the lands, territories and resources that they customarily own, occupy or use.⁵⁶

Box four: Free, prior and informed consent (FPIC)

FPIC calls for good-faith consultations that are:⁵⁷

Free: This refers to consent given voluntarily and the absence of coercion, intimidation or manipulation, and is a process that is self-directed by the community from whom consent is being sought.

Prior: This means information must be provided and consent must be sought sufficiently in advance of any authorisation or commencement of activities, and that the pace and time requirements of rights holders’ consultation and consensus processes are respected.

Informed: This refers mainly to the nature of the engagement and type of information that should be provided prior to seeking consent, and requires that information should be accessible, transparent, delivered in appropriate languages, objective and complete. Relevant information includes:

- the nature, size, pace, duration, reversibility and scope of any proposed project
- the purpose of the project
- the location of areas that will be affected
- a preliminary assessment of possible economic, social, cultural and environmental impacts, including potential risks or benefits
- personnel likely to be involved
- procedures that the project may entail.

Consent: This refers to the collective decision made by the rights holders and reached through the customary decision-making processes of the affected peoples or communities. Consent is a freely given decision that may be a ‘Yes’ or a ‘No’, including the option to reconsider if the proposed activities change or if new information relevant to the proposed activities emerges. At the core of FPIC, is the right of the people concerned to choose to engage, negotiate, decide to grant or withhold consent, or to offer it with conditions.

The TGs apply FPIC to indigenous and tribal peoples, but do not extend FPIC to all other legitimate land tenure right holders. Instead, the TGs call for decision making to be based on meaningful consultation and a new far-reaching universal standard for participation in all aspects of land governance decision making.⁵⁸ While these proposals are welcome, ActionAid believes the higher standard of FPIC – and the associated power of *consent* – should be extended to all affected local communities. A number of multinational corporations such as Coca-Cola, PepsiCo, Nestlé and Unilever have pledged to carry out FPIC with all affected local communities throughout their supply chains,⁵⁹ and momentum is gathering for FPIC to apply to all.

FAO's recent Technical Guide on FPIC, for example, says many private sector-related voluntary standards – such as the World Commission on Dams, the Forest Stewardship Council and Roundtable on Sustainable Palm Oil – all now require that companies obtain FPIC of both indigenous and local communities prior to proposed large-scale land deals.⁶⁰ The Guide also states that FPIC can also be fairly interpreted as applying to all self-identified peoples who maintain customary relationships with their lands and natural resources, implying it is enjoyed widely in rural Africa and Asia.⁶¹ Similarly, the African Commission on Human and People's Rights issued a resolution in 2012 calling on states to ensure local participation and FPIC for all communities involved in natural resource governance issues and associated land-related cases.⁶²

As an example, Mozambique requires the consultation of local communities before a large land lease can be allocated, while the law in the Philippines requires FPIC for affected indigenous peoples. However, practice often falls short of expectations in countries with such requirements, including due to major asymmetries in information, capacity and negotiating power that affect relations between companies, governments and affected people.⁶³ For FPIC to be an effective safeguard and, crucially, accessible to excluded women and marginalised communities, land governance institutions should mobilise and inform local communities of their rights to FPIC throughout the entire process of prior consultation.

Government initiatives that invoke 'public purpose', 'public interest' and 'eminent domain' to forcibly evict legitimate tenure right holders from their land should include safeguards to protect the right to FPIC for all affected local communities. National multi-stakeholder platforms should play a defining role in setting the parameters for the term 'public purpose'. Multilateral standards on land-related investments – such as World Bank safeguard policies and the International Finance Corporation's (IFC) Performance Standards – should all be reviewed and amended to include robust FPIC requirements for all proposed projects involving large-scale land deals. Likewise, updates to the Organisation for Economic Co-operation and Development (OECD) Guidelines on Multinational Enterprises should include FPIC requirements (also see Step 3).

Finally, a commitment to transparency throughout the investment process means all business enterprises should be required to publicly disclose all relevant information relating to their investment, in languages and forms accessible to all affected communities, and throughout all stages of a consent process.



Peul woman milking her cows in Djalbajani, in the northern Senegalese region of Ndiaël. Livestock is the main source of wealth for Peul people in Ndiaël, where Senhulle-Sénéthanol, a company owned by Senegalese and Italian investors, is grabbing 20,000 hectares of land from the 9,000 people who live there. Over the past three years, the majority of the communities living in the area have been standing in opposition to the project, which deprives them of access to most of their land and threatens their basic means of subsistence. The company has, however, continued to implement the project, benefiting from the lack of protection of local communities' customary land tenure rights. It has failed to carry out adequate consultations, ignored its legal obligation under Senegalese law to conduct an in-depth Environmental and Social Impact Study before starting any activity in Ndiaël, and disregarded the requirement to obtain the free, prior and informed consent of local communities.

PHOTO: GIADA CONNESTARI/ACTIONAID

Key actions to ensure FPIC for all communities affected by land-based investments

To safeguard all affected local communities, states and donors should:

- **Ensure the right to free, prior and informed consent of all affected communities.**
- **Ensure FPIC consultations involve fair and equitable participation of all groups within local communities, especially excluded and marginalised groups, such as women, children, minorities, the elderly and disabled.**
- **Mobilise land governance agencies and communicate to local communities about their rights to FPIC and its consequences.**
- **Ensure FPIC safeguards apply to 'public purpose' land deals and public-private partnerships.**
- **Incorporate FPIC for all affected communities into all international finance institution (IFI) and international finance institution (DFI) lending safeguards, IFC Performance Standards and the OECD Guidelines on Multinational Enterprises.**
- **Ensure transparency throughout the consultation and investment process by requiring investors publicly disclose all relevant information throughout all stages, including HRIAs and ESIA.**

STEP 3:**Review public policies that fuel land grabs, and replace them with policies that prioritise sustainable land use and the needs of women and other small-scale food producers**

Increased demand for land is not happening in a vacuum, but is favoured by a wide and complex web of policy incentives that create further pressure on land and facilitate large-scale land acquisitions around the world. When governments create massive tax incentives for the production of biofuels, they increase the demand for and pressure on land. When they flag entire regions as ‘open for business’ without safeguarding the rights of the people living in those regions, they create enabling environments for large-scale land acquisitions and resettlements that do not respect the free, prior and informed consent of communities.

Governments and donors should urgently suspend and review policies and projects that i) directly encourage and facilitate land grabs through unfair and possibly unlawful large-scale land transfers, or ii) indirectly incentivise and increase pressures on land and natural resources that can also cause serious rights violations and lead to land, forest and water grabs from local communities.

► 3.1 Suspend and review large-scale land concessions, special economic zones and growth corridors

States formally own much land in many Southern countries, and despite dual land administration systems involving formal and overlapping traditional and customary tenure systems, many local communities are vulnerable to land grabbing – where their often-unrecorded customary land tenure rights are not properly recognised, respected, protected or enforced.⁶⁴ In countries that maintain poor land registry records and databases, and where there are ill-defined or weak land rights for customary land users, it is easier for powerful local elites and foreign businesses to acquire large tracks of land without respect for legitimate tenure rights. This is especially the case as host governments aggressively pursue policies to attract and promote domestic and foreign direct investment (FDI) – particularly in agriculture – and *directly* intervene, encourage, promote and facilitate large-scale land sales and long-term lease agreements.

The government in Senegal, for example, is a direct actor in facilitating and granting a 50-year lease on a 20,000-ha biofuel plantation in a nature reserve in Ndiaël in northern Senegal to an Italian joint venture company, Senhuile. The fenced-off plantation risks preventing some 9,000 villagers and semi-nomadic pastoralists from accessing vital grazing land, food, water and firewood.⁶⁵ Similarly, in Tanzania the government facilitated and invoked ‘eminent domain’ and ‘public purpose’ to establish a controversial 8,200-ha jatropha plantation on community land at Kisarawe run by Sun Biofuels, a UK-registered company. Negatively affected villagers say they were inadequately consulted and unfairly compensated. Many lost access to key natural resources and ancestral graveyards, while hundreds had low paid jobs and poor working conditions on the new jatropha plantation – then lost their jobs when Sun Biofuels went bankrupt in 2012.⁶⁶



Residents of Mtamba village, Tanzania, who have lost land to the Sun Bio-fuels Kisarawe plantation organise a meeting to discuss the impact of Sun Biofuels activity on their land. July 2011
PHOTO: TOM PIETRASIK/ACTIONAID

In addition to these direct interventions, host governments also incentivise and stimulate large-scale land deals via public policies designed to attract private investment into agriculture, including via:

- business tax breaks, incentives and tax holidays
- tariff and customs duty exemptions
- relaxation of foreign capital controls
- improved infrastructure
- access to low-interest credit and loans.⁶⁷

In order to attract investors, these incentives are often linked to export-oriented geographically defined Special Economic Zones (SEZs), or to one-stop 'land banks' to apportion land for investment projects (such as Ethiopia, Guinea, Kenya and Tanzania have created).⁶⁸ Both India⁶⁹ – which has 196 SEZs,⁷⁰ and Cambodia – with over 100 Economic Land Concessions⁷¹ covering 2.6 million hectares for agro-industrial plantations growing commercial crops such as rubber, sugarcane and palm oil⁷² – have been accused of encouraging widespread land grabbing and forced evictions by multiplying these large-scale land concessions.⁷³

The 'growth corridors' approach of clustering agribusinesses in large fertile areas of land located close to water resources and strategic infrastructure – such as improved trunk roads, irrigation, processing, railroads and deepwater ports – are attempts to realise this vision. Focused mainly on large-scale commercial agriculture but also forestry and mining, growth corridors aim to transfer so-called idle, vacant, under-utilised or available land to large-scale investors and link to regional and global markets.⁷⁴

Box five: The Southern Agricultural Growth Corridor of Tanzania

In Tanzania, the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) covers around 287,000km² of land – nearly one-third of the country – and is formed along the traditional trade route linking Tanzania to landlocked countries in East Africa. Nine to 11 million people (depending on the source)⁷⁵ live in the SAGCOT region. Launched at the World Economic Forum Africa in 2010, the SAGCOT pledges to bring 350,000 hectares of land under commercial agricultural production and to generate US\$2.1 billion of private sector investment in agriculture over 20 years.⁷⁶ ActionAid's research in Tanzania has found that rural communities risk being pushed off their land by one of SAGCOT's flagship projects, a sugar cane plantation project planned by EcoEnergy, a Swedish company, with a 99-year lease on approximately 20,000 hectares of land. Although the company has conducted consultations with affected villagers, ActionAid's research finds that many people have not been offered the choice of whether to be resettled or not, and have not been given crucial information about the irreversible effects the project may have on their livelihoods and their rights to food and land. By failing to obtain the free, prior and informed consent of communities to develop the project, EcoEnergy is grabbing the land of these communities, or risks doing so.⁷⁷



Sefu Mkomeni is a farmer living in Matipwili, where EcoEnergy expects to extend its operations. He grows maize, mangoes, bananas and oranges on his land. “The choice to stay or leave our land was not there: it was only to leave. We have been given no option on how the land is to be used. I have already invested in that area and now I am expected to move.”
 PHOTO: DANIEL HAYDUK/ACTIONAID

The TGs say responsible investment in agriculture should do no harm, safeguard against dispossession and environmental damage, and respect human rights. Investment in agriculture should contribute to poverty eradication, food security and the sustainable use of natural resources. However, evidence from several growth corridors show they incentivise land grabbing and cause human rights violations and environmental degradation. More fundamentally, the TGs say states should promote investment models ‘that do not result in the large-scale transfer of tenure rights to investors’.⁷⁸

Governments should also consider imposing ‘ceilings’ on the size of permissible land transactions and introduce rules requiring parliamentary approval for all large-scale land transfers.⁷⁹ In recent years, countries as diverse as Australia, Brazil and Rwanda have imposed ceilings on large-scale foreign ownership of

land,⁸⁰ while Cambodia recently imposed a moratorium on large-scale agricultural land investments and revoked several contracts.⁸¹ However, these measures are often circumvented by companies or authorities through national subsidiaries, land concentration or contract farming. They should thus not be considered by governments as stand-alone measures, but rather be included in measures to be adopted by multi-stakeholder platforms as part of the implementation of the Tenure Guidelines.

Key actions to suspend and review large-scale land concessions, special economic zones and growth corridors

States should:

- **Establish rules that require parliamentary or national multi-stakeholder land governance platform approval for all large-scale land deals.**
- **Suspend and review all special economic zones, growth corridors and large-scale land concessions through national multi-stakeholder land governance platforms, assess them for impacts on tenure rights, human rights, and environmental, social and labour rights – and halt them if necessary.**
- **Consider imposing measures such as ‘ceilings’ on the size of permissible land transactions or a moratorium on all large-scale land deals until necessary regulatory safeguards are in place to prevent tenure and human rights violations.**

► 3.2 Suspend and review international aid policies, initiatives, projects and policy advice that incentivise large-scale land acquisitions

Many policies, initiatives, projects and policy advice supported by international donors and international finance institutions (IFIs) – including the World Bank, African Development Bank (AfDB), Asian Development Bank (ADB) and European Investment Bank (EIB) – also directly and indirectly incentivise large-scale land deals and transfers of tenure. They do this by:

- directly participating in or lending to large-scale agribusiness projects, e.g. through the World Bank's International Finance Corporation (IFC)⁸²
- promoting investment priorities, regulations and domestic land policy reforms that favour large investors to the detriment of small-scale food producers
- ranking countries through mechanisms such as the World Bank's 'Doing Business' governance country rankings and 'Enabling the Business of Agriculture' survey indicators.

In a recent in-depth analysis, the International Consortium of Investigative Journalists (ICIJ) showed that development projects supported by the World Bank from 2004 to 2013 were responsible for the physical or economic displacement of 3,350,449 people.⁸³ Yet the IFC Performance Standards state that resettlement should be avoided when possible. If not, "displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them (...) to pre-displacement levels".⁸⁴ However, the ICIJ discovered that basic information – such as how many people would be negatively affected by projects or the amount of compensation people received – was very difficult to find.

Similarly, development aid channelled through European development finance institutions (DFIs)⁸⁵ is supporting large-scale projects linked with involuntary displacements and is accused of having lax and non-transparent human rights and environmental and social standards. A review in 2013 found that nine European DFIs invest over €1 billion in large-scale agribusiness projects and initiatives – such as growth corridors – with several allegations of rights violations.⁸⁶

The New Vision for Agriculture launched at the World Economic Forum in 2010 has also largely encouraged large-scale public-private partnerships (PPPs) designed to stimulate and accelerate investment in commercial agriculture. The New Vision has partnered with the G8 and G20 and spawned subsequent initiatives, such as the New Alliance for Food Security and Nutrition. At regional and country levels, it has catalysed so-called 'mega' PPPs in 14 countries in Asia, Africa and Latin America to date, including a regional partnership called Grow Africa⁸⁷ (a parallel platform is planned by ASEAN in south-east Asia).

In Africa, the New Alliance now represents a principle focus for aid; donors have already committed US\$5.9 billion in overseas development assistance to support New Alliance country cooperation agreements in ten African countries.⁸⁸ In exchange for this support, these countries have adopted cooperation framework agreements and made over 213 policy commitments to reform land, trade, tax and seed legislation that mainly favour industrial, high-input and large-scale models of investment in agriculture. Several of these encourage the development of agricultural hubs or growth corridors to attract investment,⁸⁹ threatening to by-pass and crowd out sustained investments in family farming-based systems and increasing the risks of forced evictions. In addition, a number of New Alliance country cooperation agreements were agreed and finalised with very little meaningful participation from women and small-scale food producer organisations and their representatives.⁹⁰ The TGs, by contrast, guide states to establish national multi-stakeholder platforms and to ensure free, active, effective, meaningful and informed participation in all key land-related decision-making processes.

More indirectly, indicators such as the Enabling the Business of Agriculture (EBA) initiative and the influential Doing Business rankings push governments into a competition to reduce economic regulation as well as environmental and social standards and safeguards.⁹¹ These types of rankings and policy advice heavily impact land and agriculture governance in those countries, promoting policy changes that undermine farmers' access to land and natural resources and increase their dependence on food value chains controlled by large investors, rather than adapting local value chains to their needs.

Key actions to suspend and review aid policies, initiatives, projects and policy advice that incentivise large-scale land acquisitions

States should:

- **Ensure all donor, IFI- and DFI-funded initiatives incorporate compliance with the TGs as a pre- condition to any land-related investment, target the needs of women and small-scale food producers, and ensure they undertake HRIAs, ESIs and FPIC in all affected communities.**
- **In particular, halt and withdraw support to the G8 New Alliance and replace it with participatory strategies that focus on supporting women and small-scale food producers and which scale-up sustainable approaches such as Climate Resilient Sustainable Agriculture.**

► 3.3 Review trade and investment rules and ensure they comply with human rights and environmental, social and labour standards

Governments should review and ensure all trade and investment rules – plus those coming up for negotiation, revision or renewal – include explicit clauses stating that they prioritise compliance with human rights, legitimate tenure rights and other environmental, social and labour rights, standard, duties and obligations.

Legal frameworks governing trade and investment have a direct bearing on large-scale land deals.⁹² While many poor countries vulnerable to land grabbing have generally weak regulatory mechanisms at the national level, foreign investment now enjoys a vast, powerful and decentralised international network of investment treaties and free trade agreements that give investors far-reaching investor protection.

Foreign investors and their legal assets are protected from expropriation, nationalisation and arbitrary treatment at the hands of host governments through a patchwork regime of multilateral agreements.⁹³ These include: the World Trade Organization General Agreement on Trade in Services and Trade Related Investment Measures; a web of 3,200 bilateral investment treaties (BITs); regional free trade agreements such as the North American Free Trade Agreement or the EU-Caribbean Economic Partnership Agreement; individual investment contracts between companies and states; and Preferential Trade Agreements such as the EU's 'Everything But Arms' initiative.⁹⁴

Box six: The bitter taste of sugar in Cambodia



Huoy Mai and Suon Sorn, landless farmers in Oddar Meanchey, Cambodia, testify about the impacts of land grabs on their livelihoods. May 2015
PHOTO: TUM SOTHEARY

In 2009, Huoy Mai, now 53 years old, lost the 25 hectares where she had been cultivating rice and fruits such as bananas, mangoes and papayas since 2003. “On the 9th of October 2009, the soldiers arrived in trucks to take our land. I refused. Five months pregnant, I walked for three days to get to Siem Reap, then to Phnom Penh, to protest near to the Prime Minister,” she explains. Under the guise of a response, Huoy Mai was arrested and imprisoned for eight months without any legal judgment being made on her case:

“I did not leave prison until the day I gave birth, and then I was put back in prison with my baby.” Huoy Mai now lives in Taman and farms rice and manioc on the lands of others. “Now I don’t protest anymore,” she says, “but I want to get my land back so my children can return home.”

Huoy Mai’s husband died two years ago. She has eight children, three of whom have left for Thailand to work in the construction industry. Forced to live in very difficult conditions, Huoy Mai is still waiting for her land to be returned to her. She is now a landless labourer, living and cultivating plantation crops on the 1.5 hectares of arable land that belongs to the Ratanak Rukkha Community Forestry.

For several thousand villagers like Huoy Mai in Oddar Meanchey recent land deals to grow sugarcane have left them with a bitter legacy. In 2008, three sugar companies (Angkor Sugar Company, Tonle Sugar Cane Company and Cane and Sugar Valley Company) received 70-year long Economic Land Concessions (ELCs) from the Cambodian government, granting them access to 19,700 hectares of land. More than 1,000 people were forcibly evicted and 10,000 affected by the three concessions, with many farmers being prevented from using the land that they had been farming for many years.⁹⁵

Sugar exports benefit from preferential trade agreements with the EU and the Everything But Arms (EBA) initiative, which provides incentives for international investors to produce in Cambodia, as they can rely on inexpensive production and export costs. The EBA trade deal has been criticised by Cambodian NGOs for lacking effective human rights safeguards and for fostering widespread human rights violations in Cambodia’s sugar industry. As a response to these criticisms, the Cambodian government announced in February 2014 the creation of a working group gathering ministers, companies involved in land grabs and the EU delegation to Cambodia to re-evaluate compensation to local communities.

The companies eventually returned the land to the Cambodian government, but evicted communities are still waiting for their land to be returned to them.

“We have lost our forest, we have lost our farmland, and the people who used to collect non-timber products have lost a source of income,” said Suon Sorn, who also lost his farm to the plantations. He now coordinates the community-based organisation Ratanak Rukka Community Forestry. “We do not see any benefits, only trouble.”

Sugarcane production in Cambodia demonstrates how global and regional trade deals that put the rights of corporate investors before those of local communities easily lead to the fuelling of land grabs.

Most investment treaties are silent on human rights. Strong investor protection also curtails, or threatens to curtail, governments' policy space and ability to regulate for progressive agrarian reform and agricultural policies, and to adopt public purpose measures or laws protecting public health, the environment or other human rights.⁹⁶

A key provision in most BITs and investment chapters in free trade agreements is a controversial mechanism that allows foreign investors to sue host governments in private international arbitration tribunals outside of the regular national court system.⁹⁷ Investors' claims against governments through secretive, non-transparent and binding Investor-State Dispute Settlement (ISDS) arbitral tribunals have surged by 400% over the last few years.⁹⁸

Investors are enabled to sue and claim compensation and substantial damages if they believe their existing or future 'right to profit' from their investment is adversely affected by changes in policies or regulation. Experts say even the threat or fear of a potentially expensive investor-state legal dispute can have a 'chilling' effect on governments' willingness to regulate foreign investors in the public interest.⁹⁹

ISDS would, in particular, prevent land redistribution reforms if compensation is not considered high enough by foreign companies being expropriated, which is particularly burdening for developing countries with a limited public budget.¹⁰⁰ In Zimbabwe, BITs signed by Zimbabwe were used to bring the government to court and to challenge its redistributive reforms, with the tribunal arbitrating that the "*consideration of rights of indigenous people under international law (...) was not part of the tribunal's mandate under either the ICSID [International Centre for Settlement of Investment Disputes] convention or the applicable BITs*".¹⁰¹ Similarly in a case involving Argentina's right to water, the ICSID stated that "*people's right to water must not be exercised by a public authority in an absolute manner that would defeat the investor's BIT rights*".¹⁰²

The EU has concluded numerous preferential trade agreements that include human rights clauses – such as the EU's Everything But Arms duty-free and quota-free import agreement with Least Developed Countries. However, the treaties do not allow individual petitions to initiate investigations into alleged violations of labour and environmental obligations (although systematic rights violations caused by trade – including widespread land grabbing – can be investigated).¹⁰³

Key actions to ensure trade and investment rules comply with human rights

States should:

- Review all trade and investment rules and ensure they include clauses that comply with human rights, legitimate tenure rights, and labour, social and environmental rights, standards, duties and obligations.
- Prepare human rights impact assessments (HRIAs) ex-ante and ex-post for all trade and investment rules and agreements, and include due diligence obligations for business enterprises to respect human rights and labour, social, environmental, national, regional and international standards.

- **Ensure the conclusion of any trade or investment rules do not impose obligations inconsistent with existing human rights obligations, and that they specify that human rights obligations prevail over investor interests.**
- **Ensure all trade and investment rules are negotiated transparently and with the full participation of national multi-stakeholder land governance platforms, and that rules and treaties are authorised by parliament and monitored by multi-stakeholder platforms.**

► **3.4 Phase out the energy and climate policies that fuel land grabs – especially biofuel mandates and REDD+**

Governments and donors should phase out specific climate change-related policies that encourage land grabs. This includes crop-based biofuel production and consumption mandates, and UN forest carbon offset schemes that incentivise land grabs and bring few or no climate benefits.¹⁰⁴ A number of key public policies designed to mitigate climate change such as biofuel mandates are directly and indirectly increasing pressures on land, water and ecosystems, and are not – as originally intended – reducing overall carbon emissions.¹⁰⁵

Biofuel mandates

It is predicted that global demand for biofuels will reach 172 billion litres by 2020, up from 81 billion litres in 2008. At current production levels, that would mean an additional 40 million hectares of land would need to be converted to growing crops for biofuels.¹⁰⁶ Biofuel production has largely been driven by ambitious government support for production and consumption in OECD countries. The EU's Renewable Energy Directive, for example, requires that at least 10% of all EU transport fuels come from renewable sources by 2020, with a recently adopted cap stipulating that no more than 70% of this 10% target is supplied from land-based biofuels such as sugarcane, maize or vegetable oils.¹⁰⁷

Biofuel projects are the second most important driver of large-scale land acquisitions,¹⁰⁸ and the World Bank identified “demand for biofuel feedstock as a reflection of policies and targets in key consuming countries” as one of the main drivers of the global expansion of cultivated area.¹⁰⁹ The expansion of large-scale biofuel plantations has caused major deforestation and carbon losses from cultivation of peat lands, while marginalised local communities have lost access to land, grazing grounds and forest resources.¹¹⁰ The research group GRAIN lists 293 reported land grabs around the world between 2002 and 2012 – covering 17 million hectares – where the stated intention of the investors is production of biofuels.¹¹¹ In one example, ActionAid's research in 2013 on the impacts of Addax Bioenergy, a Swiss-owned sugar plantation in northern Sierra Leone producing ethanol biofuels for the EU, found widespread and serious concerns about increased hunger due to loss of land, low compensation and dependence on low seasonal wages.¹¹²

In addition to increasing pressure on land, biofuel production increases the risks of price volatility, which brought a group of intergovernmental organisations including the FAO, the International Fund for Agricultural Development (IFAD), the World Bank and the World Trade Organization to call on G20 governments to end all policies supporting biofuel production and consumption.¹¹³ Finally, while they were

introduced as a ‘renewable energy’, biofuels are not living up to their promise of reducing greenhouse gas emissions. As biofuel policies have generated greater demand for agricultural land, fragile ecosystems and carbon stores such as forests, peat lands and grasslands are also being converted to crop fields. This results in a loss of biodiversity and in substantial increases in greenhouse gas emissions from ploughing the soil and removing vegetation.¹¹⁴

REDD+

Other emerging approaches to tackling carbon emissions, such as the Reducing Emissions from Deforestation and Forest Degradation (REDD+) scheme, pay owners of tropical forests compensation for maintaining their forests rather than cutting them down, and offset greenhouse gas emissions through a global trading system of ‘carbon credits’. But they can also intensify the risks of land grabbing, exacerbate local tensions over land and forest resources. They have also had “significant negative impacts” on rights such as FPIC and on the food security of forest-dependent indigenous peoples and local communities.¹¹⁵

Monitoring, reporting and verification (MRV) of forest carbon is notoriously complicated and costly. Many farming and indigenous groups also voice concerns that when forests are treated simply as carbon sinks, many other cultural, social, ecological, economic and intrinsic local values can be undermined.

Developed within the UN Framework Convention on Climate Change (UNFCCC), recent evidence from pilot projects in Cameroon, Costa Rica and Mozambique shows that the rights of local communities to FPIC had not been ensured. Furthermore, the implementation of REDD+ and government allocation of ‘carbon rights’ is in conflict with the land rights of indigenous and forest peoples in Cameroon and at the Kalimantan Forests and Climate Partnership (KFCP) in Indonesia.¹¹⁶ Small-sale food producers and local communities have been threatened and criminalised in Peru, while in Colombia the government has been trying to stop ‘carbon cowboys’ persuading communities to sign over the management of their territories under REDD+ so that they can reap and harvest the rewards of ‘carbon income’.

Key actions on energy and climate policies that encourage land grabs

States and donors should:

- **Phase out land-based biofuel production and consumption mandates.**
- **Suspend and review all REDD+ forest carbon offset schemes and initiatives.**

► 3.5 Prioritising public investment in human-rights based and environmentally conscious approaches such as Climate Resilient Sustainable Agriculture

Instead of promoting investment in industrial agriculture that causes large-scale land transfers, degrades the environment, leads to low pay and poor working conditions, and reinforces the power of large agribusinesses, governments and donors should redirect public investment and support towards food sovereignty. They should target the often overlooked needs of poor, excluded and marginalised rural women and small-scale food producers – who are by far the world’s largest body of ‘private investors’ in agriculture.¹¹⁷

While livelihoods resilience has always been crucial for resource-poor food producers and women, the challenges are now more urgent in the face of intensifying climate change, altered precipitation patterns, and more frequent and extreme weather events such as heat waves, droughts, floods, cyclones and wildfires.¹¹⁸ Building on the landmark multi-stakeholder International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD),¹¹⁹ ActionAid believes the multi-functional role of agriculture and ecosystems should be fully recognised and that governments and donors should substantially increase investment in sustainable small-scale approaches such as Climate Resilient Sustainable Agriculture (CRSA). Based on local, diverse, adaptive, scientific and highly context-specific knowledge – including women’s traditional knowledge – CRSA encompasses agro-ecology, low-external input agriculture, agro-forestry, organic agriculture, integrated crop and pest management, and numerous water harvesting techniques.¹²⁰

In addition, governments and donors should:

- Protect and support small-scale food producer rights to, access to and control over land, water, seeds, biodiversity and natural resources.
- Pursue agrarian reform and redistributive land policies for women and landless communities.
- Invest in women and small-scale public goods such as women-focused rural agricultural extension services, farmer-to-farmer learning, and participatory agricultural research and development (R&D).
- Support indigenous seed and grain banks, food storage, transport and rural infrastructure.
- Ensure access to rural education and affordable credit and crop insurance.
- Support small-scale food producer associations, cooperatives and women-led organisations.
- Enhance access to diverse local, district and national markets.



Nurjahan Begum and Rahela Begum coordinate a social forestry project in Faridpur, Bangladesh. Due to climate change, their community has faced increased flooding and temperatures, and erratic rainfall. They responded by organising a social forestry organisation which is collectively leasing land from their local government in order to become more resilient. As well as the medicine, fodder for livestock and firewood from the trees, the forest gives them welcome shade and stabilises their soils.

“We used to eat half rice, half sand,” says Nurjahan Begum, the committee vice-chair (in the blue sari). “With this project, we now have healthy soil, grass, protection from the sun, and a place to graze our cows and goats. We manage the forest together. No one is allowed to cut down a tree without permission from the whole group. At first our husbands didn’t understand why we wanted to plant this forest, but now they see the value.”

“We don’t fear the floods now. We’ve raised our houses, and made our preparations. We have places to go, and to take our livestock. The floods actually help the soil. We want the floods because we are now ready,” adds Rahela Begum (in the turquoise sari), the committee chair.

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STEP 4:

Regulate businesses so they are accountable for respecting human rights and environmental, social and labour standards

Governments and donors should regulate business enterprises so they are fully accountable for respecting human rights, tenure rights and environmental, social and labour standards throughout their operations at home and abroad. Major gaps remain in ensuring corporate accountability and transparency – especially in countries with weak land tenure administration and under-resourced or corrupt legal enforcement bodies.

Under the Tenure Guidelines, business enterprises have a responsibility to respect human rights throughout all their activities. These responsibilities are set out in the UN *Guiding Principles on Business and Human Rights*¹²¹ and rest on three pillars: protect, respect and remedy. Private actors have a responsibility to act with due diligence to avoid infringing human rights, and to address adverse impacts that may arise from their activities. Finally, there must be effective remedies, including judicial and non-judicial grievance mechanisms.¹²²

The responsibility to respect human rights requires that businesses:

- avoid causing or contributing to adverse human rights impact through their own activities, and address such impacts when they occur
- seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services, even if they have not contributed to those impacts.¹²³

Under the TGs, investors have a responsibility to respect national and international laws and should recognise and respect all legitimate tenure rights as well as the rule of law in general. Conducting human rights due diligence means investors should carry out independent HRIAs and ESIAAs well before a proposed project is approved. These should assess actual and potential human rights and transboundary impacts, as well as cultural impacts on indigenous peoples, including impacts on sacred sites, lands, water and way of life. Involving local communities through conducting participatory and community-based HRIAs and ESIAAs is essential to ensuring FPIC at a later stage.

In order to ensure transparency and greater public scrutiny, ActionAid considers that all HRIAs and ESIAAs should be published. They should be available in local languages and in a format that local communities can understand. Accountability can be achieved if *all* communities likely to be affected have the right to FPIC and if sufficient information is required to be presented by investors throughout the entire investment process. The TGs rightly instruct investors to endeavour to prevent corruption throughout their operations, including non-interference in non-judicial grievance mechanisms, such as national human rights institutions. Thus training judiciaries on legitimate tenure rights issues, promoting barefoot and local paralegals, and strengthening and enhancing access to domestic grievance mechanisms are also essential.

Although not covered in the TGs, ActionAid believes that requiring greater land investment contract disclosure requirements and revenue payment reporting for agribusiness – under the UN Principles on Responsible Contracts or revisions to the EU's Accounting Directive, for example – would reinforce accountability and tackle corruption.¹²⁴

International standards

Recent years have seen the emergence of international standards on ways to tackle social and environmental issues in investments processes. These include: the UN's Principles for Responsible Agricultural Investment (PRAI);¹²⁵ the OECD Guidelines on Multinational Enterprises;¹²⁶ the IFC's Performance Standards on Environmental and Social Sustainability; and equivalent documents adopted by the African Development Bank, Asian Development Bank and Inter-American Development Bank. The Equator Principles apply to large financed operations, and multi-stakeholder roundtables and certification schemes have been established in sectors including palm oil, soy, sugar and biofuels.

While all of these international standards are not legally enforceable in themselves and may not ensure human rights standards, many are backed up with grievance mechanisms, such the IFC Compliance Advisor/Ombudsman and the National Contact Points established in countries that subscribe to the OECD Guidelines on Multinational Enterprises.¹²⁷

Many voluntary codes of conduct such as the UN Global Compact, the UN Principles for Responsible Investment (PRI),¹²⁸ the World Bank Principles on Responsible Agricultural Investment (RAI),¹²⁹ and initiatives such as the Roundtable on Sustainable Palm Oil (RSPO)¹³⁰ criteria can help – although they are no guarantee that companies are not violating human rights or causing or benefiting from land grabbing. In practice, these codes do little to ensure FPIC, transparent contracts, adequate HRIAs or ESIAs, or accountability and remedy mechanisms required under human rights law. There are major gaps in enforcement, with companies rarely penalised for violating the codes.

That is why ActionAid supports the ongoing development of a binding UN Treaty on Business and Human Rights to bring together and set out all human rights responsibilities for business enterprises in one binding international treaty.

Human rights courts

Finally, affected communities may also achieve land restitution, fair compensation and some measure of corporate accountability for land grabbing and harm to the environment through national courts and National Human Rights Commissions. If their rights are not upheld by these national recourses, victims of violations or civil society organisations can take the matter to regional human rights courts such as the Inter-American Court of Human Rights, the African Court of Human and Peoples' Rights, or the European Court of Human Rights.

Although there is no global human rights court, some human rights treaties allow alleged victims to bring disputes to non-judicial bodies via the UN Human Rights Committee. Among those treaties, the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) include violations to the right to food, labour rights and the right to the highest attainable standard of health – although the latter has only a few ratifications to date.

Key actions to ensure businesses respect human rights

To ensure business enterprises are accountable for human rights, tenure rights and environmental, social and labour standards, governments and donors should:

- Ensure that business enterprises carry out human rights due diligence and conduct and publish independent and ex-ante HRIAs and ESIA, and respect FPIC for all affected local communities.
- Develop domestic regulatory investment frameworks with the national multi-stakeholder platform and in line with the UN *Guiding Principles on Business and Human Rights*, the TGs and the OECD Guidelines on Multinational Businesses.
- Strengthen and ensure access to independent, transparent, affordable and accountable domestic human rights-based grievance mechanisms.
- Adopt a binding Treaty on Business and Human Rights requiring laws to make corporate human rights due diligence mandatory, and introducing sanctions and legal liability for companies that fail to act responsibly.

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ActionAid is a global movement of people working together to achieve greater human rights for all and defeat poverty. We believe people in poverty have the power within them to create change for themselves, their families and communities. ActionAid is a catalyst for that change.

International Registration number: 27264198

Website: **www.actionaid.org**

Telephone: **+27 11 731 4500**

Fax: **+27 11 880 8082**

Email: **mailjhb@actionaid.org**

ActionAid International Secretariat,
Postnet Suite 248, Private Bag X31, Saxonwold 2132,
Johannesburg, South Africa.

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